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10/033,113	10/25/2001	Allan Charles Acciaccia	DP-305859	7686

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EXAMINER

FLANDRO, RYAN M

ART UNIT PAPER NUMBER

3679

DATE MAILED: 12/09/2003

7

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/033,113

Applicant(s)

ACCIACCA, ALLAN CHARLES

Examiner

Ryan M Flandro

Art Unit

3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78:  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

#### *Claim Objections*

2. Claims 1-10 are still objected to for the following reasons: Applicant's repetitive use of the specific words "end portion" for portions of several different elements of the member, and including the overall member itself, is confusing. Applicant is advised to more clearly define each element and their respective portions in order to make the claims more readily understandable.

#### *Claim Rejections - 35 USC § 102*

3. Applicant did not amend the claims in the response filed 22 December 2003 (paper no. 6).
- 6). The following rejections are, therefore, the same as set forth in the previous Office action (paper no. 5). They are repeated below for convenience of review.
4. Claims 1-5, 8, and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Gleasman et al (US 2,854,857) (Gleasant).
- a. Claim 1. Gleasant specifically shows a cable attachment for attaching a cable **12** to an end portion of a member **1** comprising the member **1** having an open ended loading slot **A** that extends completely across and into the end portion of the member **1** to an inner end (opposite side of surface **B**) forming separate cantilevered fingers **F1,F2**

extending across the member **1** on opposite sides of the loading slot **A**, the loading slot **A** spanning the separate fingers **F1,F2** to form openings between the fingers **F1,F2** at opposite sides of the end portion, the end portion having a retaining slot **16,18** that is transverse to the loading slot **A**, the loading slot **A** having an inner end portion (near opposite side of surface **B**) and the retaining slot **16,18** having an outer end portion **18** that overlaps the inner end portion of the loading slot **A**, the end portion having a first transition slot **7** that extends from one of the opposite sides of the end portion through one of the fingers **F1** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, the end portion having a second transition slot **7A** that extends from another of the opposite sides of the end portion through another of the fingers **F2** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, and the cable **12** extending through the retaining slot **16,18** and having a ferrule **5** that engages a surface of the end portion adjacent the retaining slot **16,18** for moving the member **1**, the cable **12** being moveable axially in the retaining slot **16,18** to form a lost motion attachment with the end portion of the member **1** (see annotated figure 2 below; columns 1 and 2).

f. Claim 8. Gleasman, as applied above, shows a cable attachment for attaching a cable **12** to an end portion of a moveable member **1** comprising the member **1** having an open ended loading slot **A** that extends completely across and into the end portion of the member **1** to an inner end (opposite side of surface **B**) forming separate parallel

cantilevered fingers **F1,F2** on opposite sides of the loading slot **A**, the loading slot **A** spanning the separate fingers **F1,F2** to form openings between the fingers **F1,F2** at opposite sides of the end portion, the end portion having a retaining slot **16,18** that is perpendicular to the loading slot **A**, the loading slot **A** having an inner end portion (near opposite side of surface **B**) and the retaining slot **16,18** having an outer end portion **18** that overlaps the inner end portion of the loading slot **A**, the end portion having a first transition slot **7** that is perpendicular to the loading slot **A** and the retaining slot **16,18** and that extends from one of the opposite sides of the end portion through one of the fingers **F1** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, the end portion having a second transition slot **7A** that is aligned with the first transition slot **7** and that extends from another of the opposite sides of the end portion through another of the fingers **F2** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, and the cable **12** extending through the retaining slot **16,18** and having a ferrule **5** that engages a surface of the end portion (opposite side of surface **B**) adjacent the retaining slot **16,18** for moving the member **1**, the cable **12** being moveable axially in the retaining slot **16,18** to form a lost motion attachment with the end portion of the moveable member **1** (see annotated figure 2 above; columns 1 and 2).

g. Claim 9. Gleasman provides a member **1** having an open ended loading slot **A** that extends into an end portion of the member **1** to an inner end (opposite side of surface **B**) forming separate cantilevered fingers **F1,F2** on opposite sides of the loading slot **A**, the loading slot **A** spanning the separate fingers **F1,F2** to form openings between the

fingers **F1,F2** at opposite sides of the end portion, a retaining slot **16,18** that is transverse to the loading slot **A**, the loading slot **A** having an inner end portion (near opposite side of surface **B**) and the retaining slot **16,18** having an outer end portion **18** that overlaps the inner end portion of the loading slot **A**, a first transition slot **7** that extends from one of the opposite sides of the end portion through one of the fingers **F1** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, and a second transition slot **7A** that extends from another of the opposite sides of the end portion through another of the fingers **F2** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, a cable **12** having a ferrule **5** attached to it (see annotated figure 2 above; columns 1 and 2).

Gleasant further shows and discloses the step of inserting an end length of the cable **12** transversely into the loading slot **A** until the cable **12** is disposed in the inner end portion of the loading slot **A**, rotating the end length of the cable **12** in a planar fashion through the first and second transition slots **7,7A** until the length of the cable **12** is aligned with the retaining slot **16,18**, and inserting the end length of the cable **12** into the retaining slot **16,18** so that the cable **12** is moveable axially in the retaining slot **16,18** and the ferrule **5** is engagable with a surface (opposite side of surface **B**) of the member **1** adjacent the retaining slot **16,18** (see figure 1 and annotated figure 2 above).

Under the principles of inherency, if a prior art device, in its normal and usual operation, would necessarily perform the method claimed, then the method claimed will be considered to be anticipated by the prior art device. When the prior art device is the same as a device described in the specification, it can be assumed the device will

inherently perform the same process. *In re King*, 802 F.2d 1324, 231 USPQ 136 (Fed. Cir. 1986).

***Claim Rejections - 35 USC § 103***

5. Claims 6, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gleasman, as applied above, in view of McGovern (US 2,511,283).

a. Claim 6. Gleasman specifically shows a cable attachment for attaching a cable **12** to an end portion of a member **1** comprising the member **1** having an open ended loading slot **A** that extends completely across and into the end portion of the member **1** to an inner end (opposite side of surface **B**) forming separate cantilevered fingers **F1,F2** extending across the member **1** on opposite sides of the loading slot **A**, the loading slot **A** spanning the separate fingers **F1,F2** to form openings between the fingers **F1,F2** at opposite sides of the end portion, the end portion having a retaining slot **16,18** that is transverse to the loading slot **A**, the loading slot **A** having an inner end portion (near opposite side of surface **B**) and the retaining slot **16,18** having an outer end portion **18** (opposite side of surface **B**) that overlaps the inner end portion of the loading slot **A**, the end portion having a first transition slot **7** that extends from one of the opposite sides of the end portion through one of the fingers **F1** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, the end portion having a second transition slot **7A** that extends from another of the opposite sides of the end portion through another of the fingers **F2** into the inner end portion of the loading slot **A** and the overlapping outer end portion **18** of the retaining slot **16,18**, and the cable



**12** extending through the retaining slot **16,18** and having a ferrule **5** that engages a surface of the end portion adjacent the retaining slot **16,18** for moving the member **1**, the cable **12** being moveable axially in the retaining slot **16,18** to form a lost motion attachment with the end portion of the member **1**; the retaining slot **16,18** shaped to inhibit escape of the cable **12** transverse to the axis of the cable **12**; the outer end portion **18** of the retaining slot **16,18** is linear and the retaining slot **16,18** has a curved intermediate portion **16** that inhibits movement of the cable **12** transversely in the retaining slot **16,18** (see annotated figure 2 above; columns 1 and 2).

- i. Gleasman lacks disclosure of a linear inner end portion.
- ii. McGovern, however, teaches a retainer slot **20,42,18** having a linear inner end portion **18** adjacent to a curved intermediate portion **42** in order to provide a throat slot located farther away from any cable exit portion than the intermediate curved portion (see figures 2 and 3; column 3 lines 42-55).
- iii. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made modify the cable attachment of Gleasman by providing a linear inner end portion of the retaining slot in order to provide a space to be occupied by the cable away from the curved intermediate and linear outer end portions and thereby further inhibit escape of the cable as taught by McGovern.

b. Claim 7. The combination of Gleasman and McGovern, as applied to claim 6, includes the cable **C** being disposed in the linear inner end portion **18** of the retaining slot **20,42,18** (see specifically McGovern figures 2 and 3).

c. Claim 10. The combination of Gleasman and McGovern, as applied above, includes the outer end portion **18** (Gleasman) of the retaining slot **16,18** being linear and the retaining slot **16,18** has a linear inner end portion (**18** of McGovern) and a curved intermediate portion **16** (or **42** of McGovern) that inhibits movement of the cable **12** transversely in the retaining slot **16,18** between the linear inner end portion (**18** of McGovern) and the linear outer end portion **18** (Gleasman), and wherein the end length of cable **12** is inserted into the retaining slot **16,18** until it is disposed in the inner end portion (**18** of McGovern) of the retaining slot **16,18** (see subsections 5(a) and 5(b) above).

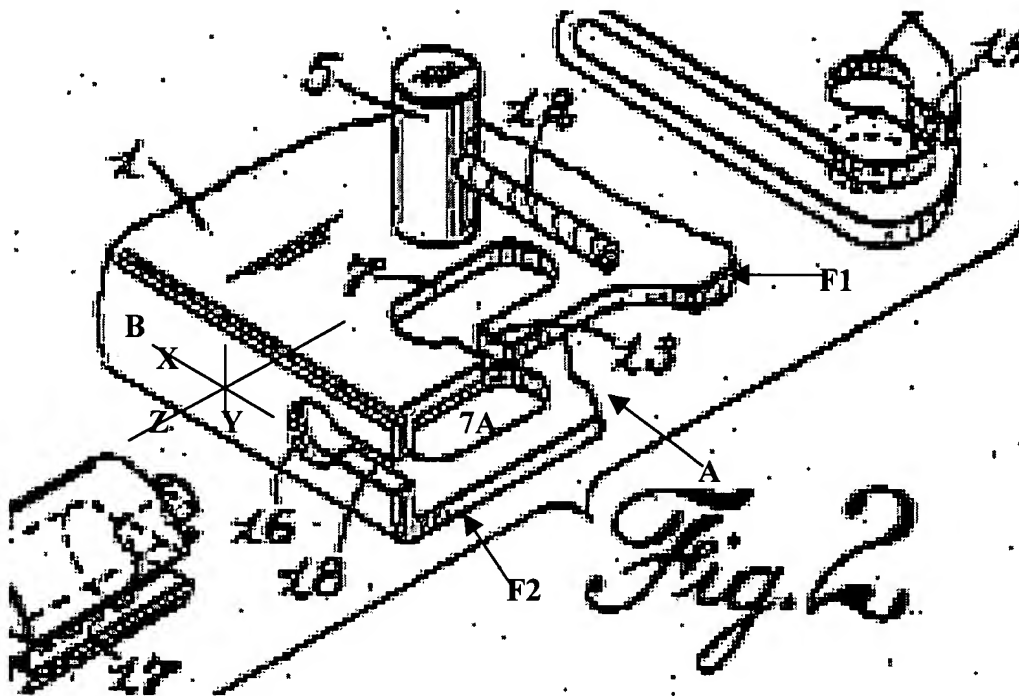
### *Response to Arguments*

6. In response to applicant's argument that the objection to the claims is improper because "[t]he language of the claims mimics the language of the specification which is tied to the patent application drawing by reference numerals," the Examiner notes that although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The objection is maintained.

7. The Applicant argues that the structure of the cable attachment disclosed in Gleasman is quite different from that claimed by Applicant. With Applicant's particularized arguments in mind (see pages 8-13 of paper no. 6), the Examiner respectfully disagrees for the following reasons:

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- a. In general, the Examiner notes that Applicant's claims positively recite very little substantive structure. That is, the claims predominantly set forth the claimed cable attachment by recitation of the slots (empty space) created by the underlying structure which is not positively recited. This "passive" claim construction is read broadly by the Examiner according to the rejections set forth above such that figure 2 of Gleasman is believed to read on the claims as recited.
- b. More specifically, the Examiner has read the Gleasman reference such that any "slot" shown therein extends indefinitely in a direction transverse to a defined planar boundary of a given slot. For example (see figure 2 as modified below), with respect to the retaining slot **16,18**, the Examiner understands this slot to extend in two directions (X,Y) in the plane of surface **B** as well as indefinitely in a direction (Z) transverse to the plane of surface **B** such that the slot can be said to "overlap" with an inner end portion of space **A** between the plates **F1,F2**. In the same respect, slots **7** and **7A** are interpreted to extend in two directions (Z,X) along the surfaces of plates **F1 and F2** as well as indefinitely in a direction (Y) transverse to the surfaces of plates **F1 and F2** such that the slots **7 and 7A** can be said to "overlap" with one another as well as with retaining slot **16,18** and space **A**. In essence, each "slot" has boundaries defined in one plane but is understood to extend indefinitely in directions transverse to that plane. The Examiner respectfully asserts that such an interpretation of Gleasman overcomes Applicant's arguments as to the subject matter recited in paragraphs b-d of claim 1 as denoted in pages 8-9 of the response (paper no. 6).



c. Next, Applicant argues that the Gleasman ferrule **5** does not engage a surface of the end portion adjacent the retaining slot for moving the member. The Examiner disagrees. Specifically, the ferrule **5** engages a surface of the slot **7 and 7A**. In view of the understanding of Gleasman expressed above, the Examiner respectfully submits that the surfaces of slots **7 or 7A** can indeed be considered adjacent to the retaining slot **16,18**, since this slot is understood to “overlap” with slots **7 and 7A**. The term “adjacent” is not deemed to distinguish over the structure disclosed in Gleasman.

d. Regarding claims 2, Applicant argues that it is not possible to load the cable 12 into retaining slot **16,18** through space A and slot **7A** (page 11, second full paragraph). The Examiner respectfully disagrees in view of the understanding of Gleasman expressed above.

- e. Regarding claim 3, Applicant argues that slots **7 and 7A** are not coplanar. The modified version of figure 2 above shows, however, that slots **7 and 7A** both lie in the (Y,X) and (Y,Z) planes. Thus, this argument is not persuasive.
- f. Regarding claim 4, Applicant argues that slot **16,18** is not linear as recited in the claim. This is not persuasive. Portions **16 and 18** of the slot lie in a straight line and, thus, the slot is linear. This meets the claimed limitation. The claim does not recite that the walls of the slot are flat or linear, which is what Applicant seems to be implying. The shape of portion **16** is irrelevant in view of the claim as written.
- g. Regarding claim 5, Applicant argues that the retaining slot **16,18** is not shaped to inhibit escape of the cable. This is not persuasive. The slot prevents escape of the cable in a multitude of directions. Reciting something being shaped “to inhibit escape” is considered broad language which the slot **16,18** of Gleasman is deemed to meet.
- h. Regarding claim 8, Applicant argues that the retaining slot **16,18** is not perpendicular to loading slot **A**. In view of the understanding of Gleasman expressed above, the Examiner maintains that slot **16,18** can be considered perpendicular to slot **A**. Specifically, slot **16,18** extending in the Z direction is perpendicular to slot **A** which extends, for example, in the X direction. Thus, this argument is not persuasive.
- i. The remaining arguments regarding claims 8 and 9 are also unpersuasive in view of the understanding of Gleasman expressed above.
- j. Lastly, with regard to Applicant’s argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention

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where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, McGovern teaches a retainer slot **20,42,18** having a linear inner end portion **18** adjacent to a curved intermediate portion **42** in order to further inhibit escape of a cable (figures 2 and 3; column 3 lines 42-55).

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ryan M Flandro whose telephone number is (703) 305-6952. The examiner can normally be reached on 8:30am - 5:30pm Mon-Fri.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynne H Browne can be reached on (703) 308-1159. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9326 for regular communications and (703) 872-9327 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

RMF  
December 6, 2003

  
**Lynne H. Browne**  
*Supervisory Patent Examiner*  
**Technology Center 3670**